IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1459 OF 2006

Govardhan Jagannath Chavare & Ors. ...Appellants

Versus

Gruh Finance Ltd & Ors. ...Respondents

Shri Shivajirao Musal for the Appellants.
Shri D.G.Dhamyre i/by M/s.M.V.Kini & Co for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 19, 2007.

P.C.:

1. The first Respondent filed a suit invoking the provisions of Order XXXVII of the Code of Civil Procedure, 1908 against the Petitioner and two others for recovery of a sum of Rs.04,26,652.83/- with interest thereon at the rate of 13% from the date of the suit till realisation of the entire amount. By the impugned order dated 13th January, 2006 the learned Civil Judge, Senior Division granted leave to defend to the Petitioners subject to condition of depositing 70% of the claim amount till 10th February, 2006. It is this order which is impugned in this Petition under Article 227 of the Constitution of India.

2. The learned Advocate for the Petitioner

submitted that the suit was premature as the loan advanced by the first Respondent was repayable by instalments over a period of twenty years. He submitted that the trial Court has no jurisdiction to entertain and try the suit. He submitted that as the period fixed for repayment of loan had not expired, the trial Court ought to have granted unconditional leave to defend. The learned Advocate for the first Respondent supported the impugned judgment and order.

3. I have considered the submissions. On the last date when this Writ Petition was argued, attention of the learned Advocate for the Petitioner was invited to the observation made by the trial Court in paragraph No.7 of the impugned order that by application dated 14th June, 2004 the first Defendant had given an assurance to deposit a sum of Rs.04,26,000/- within two months. Therefore, hearing of the Writ Petition was adjourned by passing a specific order to enable the Advocate for Petitioners to seek instructions from the Petitioners as regards the said assurance given by them. The learned Advocate for the Petitioners on instructions of the Petitioners states that they are not in a position to pay the said amount, however, the

Petitioners are ready and willing to repay the amount by instalments which were fixed earlier spanning over a period of twenty years.

4. Prima facie, at this stage it appears to me that there is hardly any dispute about the fact that the loan was advanced by the first Respondent. The suit was required to be filed by the first Respondent as the original Defendants did not pay the instalments. Therefore, by sending a demand notice, the entire loan amount was recalled with interest.

5. Considering the aforesaid factual aspects, the learned trial Judge has granted a leave to defend subject to deposit of 70% of the claim amount. Considering aforesaid the factual position, the view taken by the trial Court is reasonable which does not call for any interference in a Writ Petition under Article 227 of the Constitution of India. Hence, Writ Petition is rejected.

6. By way of indulgence, time to deposit 70% of the claim amount in terms of order dated 13th January, 2006 is extended by a period of eight weeks from today. No

further extension will be granted.

JUDGE